

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 269/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

Sri Bala Siddeshwar Aitha, Vs. Income Tax Officer,
Cherial, Ward-3,
Warangal Warangal
[PAN No. APEPA3520N]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Smt. S. Sandhya, AR
राजस्व द्वारा/Revenue by: Shri T. Venkanna, DR

सुनवाई की तारीख/Date of hearing: 07/06/2023
घोषणा की तारीख/Pronouncement on: 20/06/2023

आदेश / ORDER

Aggrieved by the order dated 29/04/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Balasiddeshwar Aitha ("the assessee") for the assessment year 2014-15, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual, filed his return of income for the assessment year 2014-15 on 20/01/2015, declaring total income of Rs. 2,31,670/-. Learned Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") by determining the total income at Rs. 36,32,840/-. While doing so, the learned Assessing Officer stated to have treated Rs. 33,75,800/- as income on the ground that the said amount

represents peak credit. However, from the details extracted in the assessment order, the learned Assessing Officer added the total deposits made into the two banks as income of the assessee.

3. At the outset, learned AR submitted that initially this appeal was disposed of by order dated 12/06/2019, restoring the appeal to the file of learned CIT(A) with a direction to provide an opportunity to the assessee to put-forth the merits of their case and to take a view afresh, according to law. She, however, submits that the learned CIT(A) disposed-of the appeal subsequently, but without providing an opportunity to the assessee and without referring to the merits of the case.

4. She submitted that under section 250(6) of the Act, the learned CIT(A) shall state the points for determination, the decision thereon that reason for the decision and it is not open for the learned CIT(A) to dismiss the appeal in limine, stating that for non-prosecution, the appeal deserves to be dismissed. She further submitted that had the learned CIT(A) gone through the submissions made by the assessee, the learned CIT(A) would have realized that deposits were made from the business receipt or from withdrawals and that no part of the deposits represent the income of the assessee. She further submitted that while proposing to adopt the peak cash credit method to arrive at the taxable income of the assessee, the learned Assessing Officer added the total deposits.

5. Per contra, learned DR submitted that the learned CIT(A) issued the notices by way of communication in the window opened by the NFAC and it is for the assessee to verify the same. According to him, when the learned CIT(A) issued notices by placing the same in the communication window that was opened by NFAC on 03/11/2022, learned CIT(A) cannot complain with the said procedure.

6. I have gone through the record in the light of the submissions made on either side. Learned CIT(A) observed that sufficient opportunity was

granted to the assessee to make submissions and file documents in support of his case by fixing the date of hearing and placing them in the communication window that was opened by the NFAC on 03/11/2022. Having observed that since the assessee failed to avail the same, he had no option to proceed *ex parte*, the learned CIT(A) while placing reliance on the decisions of CIT vs. Multiplan India Ltd. 38 ITD 320 (Del), Estate of Late Tukoji Rao Hekar vs. CWT 223 ITR 840 (M.P) and New Diwan Oil Mills vs. CIT (2008) 296 ITR 495 (P&H) and CIT vs. B.N.Bhattachargee and another 118 ITR 461 (SC), dismissed the appeal and confirmed the addition made by the learned Assessing Officer.

7. Learned CIT(A) did not refer to the facts of the case or the contentions raised by the assessee by way of written submissions or to the contentions referred to by the order passed by the Bench, remanding the issue to the file of learned CIT(A). Learned CIT(A) did not give any finding as to whether the total deposits made in to the bank accounts of the assessee represent the business receipts or income as it is.

8. In these circumstances, I am of the considered opinion that the verification of fact pleaded by the assessee is necessary at the end of the learned CIT(A) and for such purpose, I set aside the impugned order and restore the appeal to the file of learned CIT(A) for passing an order in terms of section 250(6) of the Act. Grounds are accordingly treated as allowed for statistical purposes.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 20th day of June, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 20/06/2023
TNMM

Copy forwarded to:

1. Sri Bala Siddeshwar Aitha, H.No. 17-35, Old SBH Street, Cherial, Warangal.
2. Income Tax Officer, Ward-3, Warangal.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD